

IN THE MATTER OF

**DORSEY PROFESSIONAL
CENTER, LLC**

Petitioner

BEFORE THE

HOWARD COUNTY

BOARD OF APPEALS

HEARING EXAMINER

BA Case No. 07-004S

DECISION AND ORDER

On October 8, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Dorsey Professional Center, LLC, for variances to erect a 7-foot (H) by 7-foot (w), 49-square foot freestanding sign, 26 feet from the Route 176/ Dorsey Road right-of-way instead of the requisite 49-foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height. The Petitioner is also requesting a 33-foot setback from the Douglas Legum Drive right-of-way instead of the requisite 49-foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height in a Transit Oriented Development ("TOD") Zoning District, filed pursuant to Section 3.513 of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Mark Jascewsky and Sam Lancelotta, Sr. testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 1st Election District in Elkridge and is referenced on Tax Map 37, as Parcel 24, Block 24 (the "Property"). It has an address of 6805 Douglas Legum Drive.

2. The Property is 6.14 acres in size and somewhat rectangular, with the southern property line running along Route 176 bowing in somewhat in relation to a bend in the road near the Property's eastern boundary. It is improved with two structures, a multi-story office building, and a mixed-use office building.

3. Vicinal properties. All vicinal properties are zoned TOD. The site to the northwest is improved by a multi-story office building addressed as 6797 Dorsey Road. The area southwest of the site and across Route 176 is improved by single-family dwellings. The area east of the site is improved by two multi-story office buildings.

4. The Petitioner is requesting variances under Section 3.513 of the sign code to a 7-foot (H) by 7-foot (w), 49-square foot freestanding sign, 26 feet from the Route 176/ Dorsey Road right-of-way instead of the requisite 49 foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height. The Petitioner is also requesting a 33-foot setback from the Douglas Legum Drive right-of-way instead of the requisite 49-foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height.

5. The proposed sign area will be an illuminated masonry structure designed to complement the two office buildings. It will be located in the Property's southwest corner, near Douglas Legum Drive, the sole means of egress to the Property.

6. The speed limit on Douglas Legum Drive is 25 miles per hour. The speed limit on Route 176/Dorsey Road is 30 miles per hour. Route 176/Dorsey Road has two travel lanes. According to the Department of Inspections, Licenses & Permits technical staff report ("The DILP Report"), Route 176/Dorsey Road has a dependency on nonlocal use.

7. The DILP Report includes photographs indicating that motorists traveling northeast and northwest on Route 176/Dorsey Road cannot view the Property because a thick line of deciduous trees and utilities runs along the property lines, including the subject property. Consequently, motorists have difficulty locating the entrance road and seeing the existing and proposed wall signage on the two buildings.

8. The proposed location of the sign will place it close to the residences across Route 176/Dorset Road. Although the sign will be perpendicular to the dwellings directly across the road, it potentially could shine into other dwellings fronting on the road, interfering with the property owners' quiet enjoyment of their property.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Fact, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical

difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Property is located along a section of Route 176/Dorsey Road, a highway with a dependency on nonlocal use. There are unique physical conditions, including a bend in the road, that block motorists' view of the entrance and the wall signs on the two buildings. I conclude the bend in the road, and the Property's location along a road with a dependency on nonlocal use are unique physical conditions leading to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

A thick row of trees and utilities along the property line bordering Route 176/Dorsey Road and along the Property to the northwest are obstructing conditions that interfere with the visibility of a complying sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural or aesthetic characteristics of the Property to be considered under Section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The proposed sign will be generally separated from vicinal properties. The vicinal properties are sufficiently distant from the proposed sign. The residences across Route

176/Dorsey Road will not be adversely affected subject to the condition that the sign shall only be illuminated during business hours. The variance will therefore not adversely affect the appropriate use or development of adjacent properties, in accordance with Section 3.513(b)(4).

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is about 7 feet tall and 7 feet wide, which is the minimum necessary for a directory sign to serve two buildings, one of which is an office and the other, a retail/office mix with up to 10 tenants. Even with the proposed variance, the sign would be located 26 feet back from the right-of-way. The requested variance is therefore the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique physical conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 5th day of November 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Dorsey Professional Center for a variance to erect a 7-foot (H) by 7-foot (w), 49-square foot freestanding sign, 26 feet from the Route 176/ Dorsey Road right-of-way instead of the requisite 49 foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height, and 33 feet from the Douglas Legum Drive right-of-way instead of the requisite 49 foot setback in relation to the aggregate sign area and the 14-foot setback in relation to the sign height in a Transit Oriented Development ("TOD") Zoning District is hereby **GRANTED;**

Provided, however, that the variance will apply only to the uses and structures as described in the petition and plan submitted, as amended, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following condition:**

1. The sign shall not be illuminated during non-business hours.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 11/7/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.